

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUANITA RAMIREZ and ANGEL
SANCHEZ RIOS,

Plaintiff(s),

v.

OUR LADY OF LOURDES HOSPITAL AT
PASCO d/b/a LOURDES HEALTH
NETWORK, ELTON KERR, MD,
JOHNSON & JOHNSON, INC., and
ETHICON, INC.,

Defendant.

NO. 2:13-CV-01108

ANSWER OF DEFENDANT JOHNSON
& JOHNSON TO PLAINTIFFS'
COMPLAINT FOR DAMAGES

JURY DEMAND

Defendant Johnson & Johnson (incorrectly named in Plaintiffs' Complaint as "Johnson & Johnson, Inc."), by and through its attorneys, responds to Plaintiffs' Complaint for Damages ("Complaint") as follows.

ANSWER OF DEFENDANT JOHNSON & JOHNSON TO
PLAINTIFFS' COMPLAINT FOR DAMAGES, CAUSE
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RESPONSE TO "PARTIES, JURISDICTION AND VENUE"¹

1. Johnson & Johnson lacks sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Complaint and, therefore, denies those allegations.

2. Johnson & Johnson lacks sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Complaint and, therefore, denies those allegations.

3. Johnson & Johnson lacks sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiffs' Complaint and, therefore, denies those allegations.

4. Answering Paragraph 4 of Plaintiffs' Complaint, Johnson & Johnson admits only that it is a New Jersey corporation with its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey. Johnson & Johnson does not manufacture, market, distribute, label or sell any product. Except as expressly admitted herein, Johnson & Johnson denies the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. Answering Paragraph 5 of Plaintiffs' Complaint, Johnson & Johnson admits only that Ethicon, Inc. is a New Jersey corporation with its principal place of business located in Somerville, New Jersey and that it is a wholly owned subsidiary of Johnson &

¹ The repetition of the Complaint's subheadings is done solely for organizational purposes and is not an admission as to their truth.

1 Johnson. Except as expressly admitted herein, Johnson & Johnson denies the allegations
2 contained in Paragraph 5 of Plaintiffs' Complaint.

3
4 6. Paragraph 6 of Plaintiffs' Complaint makes no allegation against Johnson &
5 Johnson and requires no response by Johnson & Johnson; however, Johnson & Johnson
6 denies that the characterization contained within this paragraph is a proper characterization.

7
8 7. Answering Paragraph 7 of Plaintiffs' Complaint, Johnson & Johnson admits
9 only that Ethicon, Inc. has researched, developed, designed, licensed, manufactured,
10 distributed, sold and marketed Gynecare TVT and that Gynecare TVT has been available for
11 purchase in the State of Washington. Johnson & Johnson does not research, develop, design,
12 license, manufacture, distribute, sell or market any product; therefore, Johnson & Johnson
13 denies any such allegations as they pertain to Johnson & Johnson. Except as expressly
14 admitted herein, Johnson & Johnson denies the allegations in Paragraph 7 of Plaintiffs'
15 Complaint.

16
17 RESPONSE TO "FACTS"

18 8. Johnson & Johnson lacks sufficient knowledge or information so as to form a
19 belief as to the truth of the allegations contained in Paragraph 8 of Plaintiffs' Complaint and,
20 therefore, denies those allegations.

21
22 9. Johnson & Johnson lacks sufficient knowledge or information so as to form a
23 belief as to the truth of the allegations contained in Paragraph 9 of Plaintiffs' Complaint and,
24 therefore, denies those allegations.

1 10. Johnson & Johnson lacks sufficient knowledge or information so as to form a
2 belief as to the truth of the allegations contained in Paragraph 10 of Plaintiffs' Complaint
3 and, therefore, denies those allegations.
4

5 RESPONSE TO "LIABILITY AND CAUSATION"

6 11. Johnson & Johnson lacks sufficient knowledge or information so as to form a
7 belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint
8 and, therefore, denies those allegations.
9

10 12. Paragraph 12 of Plaintiffs' Complaint makes no allegation against Johnson &
11 Johnson and requires no response by Johnson & Johnson. To the extent that Paragraph 12 of
12 Plaintiffs' Complaint makes allegations against Johnson & Johnson or Ethicon, Inc. all such
13 allegations are denied. To the extent that Paragraph 12 of Plaintiffs' Complaint makes
14 allegations against Defendants Lourdes and Kerr, Johnson & Johnson lacks sufficient
15 knowledge or information as to form a belief as to the truth of the allegations contained in
16 Paragraph 12 of Plaintiffs' Complaint.
17

18 13. Paragraph 13 of Plaintiffs' Complaint makes no allegation against Johnson &
19 Johnson and requires no response by Johnson & Johnson. To the extent that Paragraph 13 of
20 Plaintiffs' Complaint makes allegations against Defendant Kerr, Johnson & Johnson lacks
21 sufficient knowledge or information as to form a belief as to the truth of the allegations
22 contained in Paragraph 13 of Plaintiffs' Complaint.
23

24 14. Paragraph 14 of Plaintiffs' Complaint makes no allegation against Johnson &
25 Johnson and requires no response by Johnson & Johnson. To the extent that Paragraph 14 of
26

1 Plaintiffs' Complaint makes allegations against Defendant Lourdes, Johnson & Johnson
2 lacks sufficient knowledge or information as to form a belief as to the truth of the allegations
3 contained in Paragraph 14 of Plaintiffs' Complaint.

4
5 15. Paragraph 15 of Plaintiffs' Complaint makes no allegation against Johnson &
6 Johnson and requires no response by Johnson & Johnson. To the extent that Paragraph 15 of
7 Plaintiffs' Complaint makes allegations against Defendants Lourdes and Kerr, Johnson &
8 Johnson lacks sufficient knowledge or information as to form a belief as to the truth of the
9 allegations contained in Paragraph 15 of Plaintiffs' Complaint.

10
11 16. Johnson & Johnson denies the allegations contained in Paragraph 16 of
12 Plaintiffs' Complaint.

13 17. Johnson & Johnson denies the allegations contained in Paragraph 17,
14 including subparts A – E contained therein, of Plaintiffs' Complaint.

15
16 RESPONSE TO "PLAINTIFFS ELECT NOT TO SUBMIT MATTER TO
17 ARBITRATION"

18 18. Paragraph 18 of Plaintiffs' Complaint makes no allegation against Johnson &
19 Johnson and requires no response by Johnson & Johnson.

20
21 RESPONSE TO "PRAYER FOR RELIEF"

22 In response to Section V at the conclusion of Plaintiffs' Complaint, Johnson &
23 Johnson denies the same and denies that Plaintiffs are entitled to receive any recovery or to
24 receive any form of relief whatsoever.

25
26 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

ANSWER OF DEFENDANT JOHNSON & JOHNSON TO
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1 Further answering and by way of affirmative and additional defenses, Johnson &
2 Johnson alleges as follows:
3

4
5 **I.**

6 Plaintiffs' claims against Johnson & Johnson are barred because Johnson & Johnson
7 does not design, develop, manufacture, market, promote or sell any product allegedly at issue
8 in this action.

9
10 **II.**

11 Johnson & Johnson has never had possession or control over the product at issue in
12 this action, and therefore the Complaint as to each cause of action fails to state a claim
13 against Johnson & Johnson.

14
15 **III.**

16 The Complaint fails to state a cause of action upon which relief can be granted.

17
18 **IV.**

19 The Complaint fails to state a cause of action upon which relief can be granted due to
20 lack of adequate product identification.

21
22 **V.**

23 Plaintiffs' claims are barred for lack of subject matter jurisdiction.

24
25 **VI.**

26 Plaintiffs' claims are barred for lack of personal jurisdiction.

VII.

The Complaint must be dismissed because Plaintiffs provided insufficient process.

VIII.

The Complaint must be dismissed because Plaintiffs provided insufficient service of process.

IX.

Plaintiffs may be barred from bringing some of the claims alleged in the Complaint because Plaintiffs may lack standing and/or capacity to bring such claims.

X.

Plaintiffs may have failed to join indispensable parties or real parties in interest necessary for the just adjudication of this matter.

XI.

Venue in this Court is improper, and this matter should be dismissed on *forum non conveniens* grounds.

XII.

Plaintiffs' alleged causes of action have been improperly joined under the applicable Rules of Civil Procedure and the laws of the applicable state.

XIII.

The improper joinder of Plaintiffs' alleged causes of action violate the procedural and substantive due process rights of Johnson & Johnson under the Constitutions of the United States of America and the applicable state, as well as the applicable Rules of Civil Procedure and the laws of the applicable state.

1 **XIV.**

2 The improper joinder of Defendants violates the procedural and substantive due
3 process rights of Johnson & Johnson under the Constitutions of the United States of America
4 and the applicable state.

5 **XV.**

6 Johnson & Johnson is entitled to, and claims the benefit of, all defenses and
7 presumptions set forth in or arising from any rule of law or statute in Washington or any
8 other state whose law is deemed to apply in this case.
9

10 **XVI.**

11 Plaintiffs' claims are barred by the doctrine of federal preemption, as established by
12 statute, including the preemption provision of the Medical Device Amendments, 21 U.S.C. §
13 360k(a), to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.*, and by state
14 and federal case law, and are barred by the Supremacy Clause of the United States
15 Constitution, because the product(s) at issue is regulated by the U.S. Food and Drug
16 Administration ("FDA") under the Medical Device Amendments, 21 U.S.C. § 360k, *et seq.*,
17 to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.*, and other federal
18 statutes and regulations.
19

20 **XVII.**

21 Johnson & Johnson does not design, develop, manufacture, license, market,
22 distribute, sell and/or place in the stream of commerce any product. At all relevant times,
23 however, the product was in full compliance with all applicable federal statutes and
24 regulations, including but not limited to the Medical Device Amendments, 21 U.S.C. § 360k,
25
26

1 *et seq.*, to the federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.*, and other
2 federal statutes and regulations, and Plaintiffs' claims are accordingly barred.

3
4 **XVIII.**

5 Plaintiffs' claims against Johnson & Johnson are expressly and/or impliedly
6 preempted by federal law, including but not limited to the regulations promulgated by the
7 FDA and contained in Chapter 21 of the Code of Federal Regulations. *See* 21 U.S.C. § 301
8 *et seq.*; *see also* Fed. Reg. 3922 (Jan. 24, 2006).

9
10 **XIX.**

11 Johnson & Johnson does not design, develop, manufacture, license, market,
12 distribute, sell and/or place in the stream of commerce any product. Plaintiffs' claims
13 nevertheless are barred because the entity responsible for the design, development,
14 manufacture, licensing, marketing, distribution and/or sale of the product complied with all
15 applicable state and federal statutes regarding the product at issue including the requirements
16 and regulations promulgated by the FDA and contained in Chapter 21 of the Code of Federal
17 Regulations. In the event that Plaintiffs' claims are not barred, Johnson & Johnson and the
18 entity responsible for the design, development, manufacture, licensing, marketing,
19 distribution and/or sale of the product is entitled to a presumption that the product at issue is
20 free from any defect or defective condition as the plans or design for the product at issue or
21 the methods and techniques of manufacturing, inspecting, and testing the product at issue
22 were in conformity with government standards established for the industry that were in
23 existence at the time the plans or designs for the product at issue or the methods and
24 techniques of manufacturing, inspecting, and testing the product at issue were adopted.
25
26

1 **XX.**

2 Plaintiffs' claims are barred, in whole or in part, by the deference that federal and
3 state constitutional law and federal and state common law give to discretionary actions by the
4 FDA under the Federal Food, Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*, and regulations
5 promulgated thereunder.
6

7 **XXI.**

8 Johnson & Johnson does not design, develop, manufacture, license, market,
9 distribute, sell and/or place in the stream of commerce any product. However, Plaintiffs'
10 claims are governed and barred, in whole or in part, by Sections 2, 4, and 6 of The
11 Restatement (Third) of Torts (including the comments thereto) because the entity responsible
12 for the design, development, manufacture, licensing, marketing, distribution, sale and/or
13 placing the product in the stream of commerce complied with all applicable statutes and with
14 the requirements and regulations of the FDA.
15

16 **XXII.**

17 Any claims by Plaintiffs relating to alleged communications with regulatory agencies
18 in the United States government are barred in whole or in part by operation of applicable law,
19 including the First Amendment rights of Johnson & Johnson to petition the government.
20

21 **XXIII.**

22 To the extent Plaintiffs' claims can be, or are construed as, asserting a claim for
23 punitive damages, such claim is barred because the product at issue was manufactured and
24 labeled in accordance with the terms of FDA's clearance of the product at issue.
25
26

XXIV.

Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to assert a safer design for the product at issue.

XXV.

Plaintiffs' claims are barred in whole or in part because the product at issue provided a benefit to users of such product and greatly outweighed any risk created by using such product, any risk could not have been avoided through the use of the highest standards of scientific and technical knowledge available at the time, the benefit provided to users could not be achieved in another manner with less risk, and adequate warnings concerning the risk were provided.

XXVI.

Johnson & Johnson made no express or implied representations or warranties of any kind to Plaintiffs, nor did Plaintiffs rely on any representations or warranties made by Johnson & Johnson to others. To the extent Plaintiffs relied upon any representations or warranties, such reliance was unjustified.

XXVII.

Any express or implied warranties alleged to have been made by Johnson & Johnson were disclaimed.

XXVIII.

Johnson & Johnson did not make nor did it breach any express or implied warranties and/or breach any warranties created by law. To the extent that Plaintiffs relies on any theory of breach of warranty, such claims are barred by applicable law, by the lack of privity

1 between Plaintiffs and Johnson & Johnson, and/or by Plaintiffs' failure to give Johnson &
2 Johnson timely notice of the alleged breach of warranty and an opportunity to cure. Johnson
3 & Johnson further specifically pleads as to any breach of warranty claim all affirmative
4 defenses available to Johnson & Johnson under the Uniform Commercial Code, as enacted in
5 Washington or any other state whose law is deemed to apply in this case, and under the
6 common law principles of Washington or any other state whose law is deemed to apply in
7 this case.
8

9 **XXIX.**

10 The injuries and damages allegedly suffered in this action, which are denied, were not
11 foreseeable to Johnson & Johnson given the state of scientific knowledge and state of the art
12 at the time of the alleged injuries. At all times relevant, the product at issue conformed to
13 state-of-the-art specifications and state of scientific knowledge for such product at that time,
14 as well as all applicable statutes and regulations, including those of FDA.
15

16 **XXX.**

17 Plaintiffs knowingly and voluntarily assumed any and all risks associated with the use
18 of the product at issue in this case and thus the "last clear chance" and assumption of the risk
19 doctrines bar in whole or in part the damages that Plaintiffs seeks to recover herein.
20

21 **XXXI.**

22 Plaintiffs' claims are barred, in whole or in part, because the entity responsible for the
23 product acted in good faith at all relevant times and gave adequate warnings of all known or
24 reasonably knowable risks associated with the use of the product at issue.
25
26

XXXII.

Johnson & Johnson does not design, develop, manufacture, license, market, distribute, sell and/or place in the stream of commerce any product. At all relevant times herein, however, the product in question was manufactured and distributed with proper warnings, information, cautions, and instructions in conformity with generally recognized and prevailing standards in existence at the time.

XXXIII.

Plaintiffs' inadequate warning claims are barred because the alleged risk of which Plaintiffs claims is open, obvious, and/or a matter of common knowledge.

XXXIV.

Plaintiffs' claims are barred in whole or in part because the product at issue was consistent with and/or exceeded consumer expectations.

XXXV.

Johnson & Johnson does not design, develop, manufacture, license, market, distribute, sell and/or place in the stream of commerce any product. Plaintiffs' claims are barred in whole or in part, however, because the product at issue was at all times properly prepared, packaged, and distributed and was not defective or unreasonably dangerous.

XXXVI.

Adequate and complete warnings and instructions were provided with the product at issue. Johnson & Johnson does not design, develop, manufacture, license, market, distribute, sell and/or place in the stream of commerce any product. The product at issue, however, was

1 neither defective nor unreasonably dangerous when used according to their Instructions for
2 Use.

3
4 **XXXVII.**

5 At all relevant times, the warnings and instructions accompanying the product at issue
6 were governed by and conformed with applicable federal statutes, rules and regulations;
7 therefore, warnings and instructions relating to the product were presumptively adequate.

8
9 **XXXVIII.**

10 Plaintiffs' causes of action are barred by the learned intermediary doctrine.

11
12 **XXXIX.**

13 Johnson & Johnson is not liable to Plaintiffs because the end users of the product at
14 issue, Plaintiffs' physician(s), were sophisticated users of the product.

15
16 **XL.**

17 Johnson & Johnson states that the sole proximate cause of the injuries and/or
18 damages alleged by Plaintiffs was the actions, omissions, or negligence of a person or
19 persons, other than Johnson & Johnson, for whose actions, omissions, or negligence Johnson
20 & Johnson is in no way liable. Plaintiffs are not, therefore, entitled to recover from Johnson
21 & Johnson in this action. As to Plaintiffs or to any other entity or person whose conduct or
22 intervening negligence resulted in the alleged injuries and/or damages of Plaintiffs, if any,
23 Johnson & Johnson expressly pleads the doctrines of assumption of risk, contributory
24 negligence, comparative fault and/or comparative negligence, as well as the provisions of any
25 applicable comparative fault and/or comparative negligence and/or contributory negligence
26 statute, law or policy of Washington or any other applicable state.

1 XLI.

2 The injuries and damages allegedly suffered in this action, which are denied, may
3 have been caused, in whole or in part, by Plaintiffs' own fault, which bars or proportionately
4 reduces Johnson & Johnson's liability, if any, for Plaintiffs' alleged damages.

5 XLII.

6 Plaintiffs voluntarily and unreasonably chose to encounter known dangers.

7 XLIII.

8 The liability of Johnson & Johnson, if any, for Plaintiffs' non-economic loss must be
9 apportioned in accordance with the provisions of the law of Washington or any other state
10 whose law is deemed to apply in this case.

11 XLIV.

12 There is no causal relationship between Johnson & Johnson's conduct and the injuries
13 and damages alleged by Plaintiffs in the Complaint.

14 XLV.

15 At all times mentioned herein, Plaintiffs was negligent, careless and at fault and
16 conducted themselves so as to contribute substantially to their alleged injuries, losses, and
17 damages. Said negligence, carelessness and fault of Plaintiffs bars in whole or in part the
18 damages which Plaintiffs seek to recover herein.

19 XLVI.

20 Plaintiffs' alleged injuries, losses, or damages attributable to the use of the product at
21 issue in this case, if any, were solely caused by and attributable to the abnormal,

1 unforeseeable, unintended, unreasonable, and improper use or misuse which was made of
2 said product.

3
4 **XLVII.**

5 Plaintiffs' alleged injuries, losses, or damages attributable to the use of the product at
6 issue in this case, if any, were not legally caused by the product at issue, but instead were
7 legally caused by intervening and superseding causes or circumstances.

8
9 **XLVIII.**

10 Plaintiffs' alleged injuries, losses, or damages attributable to the product at issue in
11 this case, if any, were caused by the acts or omissions of third parties for which Johnson &
12 Johnson has no legal responsibility.

13
14 **XLIX.**

15 Johnson & Johnson expressly denies any third party engaging in the acts alleged by
16 Plaintiffs was acting as Johnson & Johnson's agent or servant, at the instruction of Johnson
17 & Johnson, or within its control. Therefore, Plaintiffs' claims, to the extent they seek to
18 recover for the acts or omissions of such third parties, are barred in whole or in part as a
19 matter of law.

20
21 **L.**

22 Plaintiffs' causes of action are barred because the injuries and damages allegedly
23 suffered in this action, which are denied, were due to an allergic, idiosyncratic or idiopathic
24 reaction to the product at issue in this case, or by an unforeseeable illness, unavoidable
25 accident, or preexisting condition, and/or another unrelated medical, genetic or
26

1 environmental condition, disease or illness, without any negligence or culpable conduct by
2 Johnson & Johnson.

3
4 **LI.**

5 Plaintiffs' claims are or may be barred by their failure to comply with conditions
6 precedent to their right to recover.

7 **LII.**

8 Plaintiffs' claims are barred, in whole or in part, by the doctrine of avoidable
9 consequences.

10 **LIII.**

11 The claims of Plaintiffs may be barred, in whole or in part, from recovery, due to
12 spoliation of evidence and the failure to preserve evidence necessary to the determination of
13 the claims.
14

15 **LIV.**

16 Plaintiffs' claims against Johnson & Johnson are barred by the doctrines of equitable
17 estoppel, laches, consent, waiver, informed consent, release, unclean hands, res judicata, and
18 collateral estoppel. Additionally, if any plaintiff had or has filed bankruptcy during the
19 relevant time period of the events alleged in the Complaint or files for bankruptcy at some
20 point in the future, the claims of any such plaintiffs may be "property of the bankruptcy
21 estate" which should be prosecuted by the bankruptcy trustee rather than Plaintiffs, or, if not
22 disclosed by Plaintiffs on the schedules and/or statement of financial affairs, may be barred
23 by the doctrine of judicial estoppel.
24
25
26

1 **LV.**

2 Some or all of Plaintiffs' claims may be barred by the statutes of limitations,
3 prescription, and/or statutes of repose of Washington or any other state whose law is deemed
4 to apply in this case.

5 **LVI.**

6 To the extent Plaintiffs' claims are based on alleged misrepresentations or omissions
7 made to the FDA, such claims are barred by *Buckman Co. v. Plaintiffs' Legal Committee*,
8 531 U.S. 341 (2001).

9 **LVII.**

10 Plaintiffs' alleged damages, if any, are barred in whole or in part by Plaintiffs' failure
11 to mitigate such damages.

12 **LVIII.**

13 The sale, labeling and marketing of the product at issue in this litigation is not, and
14 was not, likely to mislead or deceive the public.

15 **LIX.**

16 Any strict liability cause of action for relief is subject to the limitations set forth in
17 Restatement (Second) of Torts, Section 402A, comment k.

18 **LX.**

19 Plaintiffs' claims are barred in whole or in part under Section 402A, comments j and
20 k of the Restatement (Second) of Torts.

LXI.

Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs have released, settled, entered into an accord and satisfaction or otherwise compromised their claims by any means.

LXII.

Any recovery by Plaintiffs must be reduced or offset by all amounts paid, payable by, or available from collateral sources.

LXIII.

Plaintiffs' Complaint fails to state a claim upon which relief can be granted for costs, attorney's fees, expert fees, expenses, pre-judgment interest, post-judgment interest, refund, rescission, unjust enrichment, disgorgement or restitution.

LXIV.

To the extent Plaintiffs' claims can be, or are construed as, asserting a claim for punitive damages, such claim is barred because the Complaint fails to state facts sufficient to entitle Plaintiffs to an award of punitive damages.

LXV.

To the extent Plaintiffs' claims can be, or are construed as, asserting a claim for punitive damages, such claim is barred because no act or omission of Johnson & Johnson was malicious, oppressive, willful, wanton, reckless, or grossly negligent.

LXVI.

Plaintiffs' claims for pain and suffering are barred because they violate Johnson & Johnson's rights to procedural and substantive due process and equal protection as

1 guaranteed by the Constitutions of the United States and Washington or any other applicable
2 state.

3
4 **LXVII.**

5 To the extent Plaintiffs' claims can be, or are construed as, asserting a claim for
6 punitive damages, the imposition of punitive or exemplary damages would violate Johnson &
7 Johnson's constitutional rights, including but not limited to those under the due process
8 clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, and
9 the equivalent or correlative applicable provisions in the Constitutions, common law, public
10 policy, applicable statutes and court rules of the applicable states to these amendments and
11 the excessive fines clause in the Eighth Amendment to the Constitution of the United States
12 and the double jeopardy clause in the Fifth Amendment to the Constitution of the United
13 States. To the extent that punitive damages awarded to any Plaintiffs are (1) imposed by a
14 jury that is not provided standards of sufficient clarity for determining the appropriateness,
15 and the appropriate size, of such a punitive damages award; is not adequately and clearly
16 instructed on the limits on punitive damages imposed by the principles of deterrence and
17 punishment; is not expressly prohibited from awarding punitive damages, or determining the
18 amount of an award thereof, in whole or in part, on the basis of invidious discriminatory
19 characteristics, including the corporate status, wealth, or state of residence of defendant; or is
20 permitted to award punitive damages under a standard for determining liability for such
21 damages which is vague and arbitrary and does not define with sufficient clarity the conduct
22 or mental state which makes punitive damages permissible; (2) are not subject to independent
23 de novo review by the trial and appellate courts for reasonableness and the furtherance of
24
25
26

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1 legitimate purposes on the basis of objective legal standards and in conformity with the
2 United States Constitution as amended or any applicable State constitution as amended; (3)
3 imposed where state law is impermissibly vague, imprecise, or inconsistent; (4) subject to no
4 predetermined limit, such as a maximum multiple of compensatory damages or a maximum
5 amount; or (5) imposed on the basis of anything other than Johnson and Johnson's conduct
6 within the State where Plaintiffs resides, or in any other way subject Johnson & Johnson to
7 impermissible multiple punishment for the same alleged wrong.
8

9
10 **LXVIII.**

11 To the extent Plaintiffs' claims can be, or are construed as, asserting a claim for
12 punitive damages, Johnson & Johnson specifically incorporates by reference all standards of
13 limitations regarding the determination and enforceability of punitive damage awards as
14 applied to the state and federal courts of the applicable states under the Due Process Clause
15 of the Fourteenth Amendment to the United States Constitution.

16
17 **LXIX.**

18 Johnson & Johnson asserts the provisions of all applicable statutory caps on damages
19 of any sort, including punitive, non-economic or exemplary damages, under the laws of
20 Washington or any other applicable state.

21
22 **LXX.**

23 Johnson & Johnson specifically pleads as to Plaintiffs' strict liability claims, all
24 affirmative defenses available to Johnson & Johnson under the rules and statutes of
25 Washington or any other state whose law is deemed to apply in this case, and under any
26

1 common law principles of Washington or any other state whose law is deemed to apply in
2 this case.

3
4 **LXXI.**

5 Johnson & Johnson specifically pleads as to Plaintiffs' negligence claims all
6 affirmative defenses available to Johnson & Johnson under the rules and statutes of
7 Washington or any other state whose law is deemed to apply in this case, and under any
8 common law principles of Washington or any other state whose law is deemed to apply in
9 this case.

10
11 **LXXII.**

12 Johnson & Johnson hereby gives notice that it intends to rely upon and incorporate by
13 reference any affirmative defenses that may be asserted by any co-defendant in this lawsuit.

14
15 **LXXIII.**

16 Johnson & Johnson reserves the right to assert any additional defenses and matters in
17 avoidance, which may be disclosed during the course of additional investigation and
18 discovery.

19 **DEMAND FOR JURY**

20 Comes now Johnson & Johnson, pursuant to Federal Rules of Civil Procedure 38 and
21 LR 38, and hereby demands a trial by jury.

22 WHEREFORE, Defendant Johnson & Johnson prays that:

23
24 (1) Plaintiffs take nothing by reason of the Complaint;

25 (2) The Complaint be dismissed in its entirety and that a Judgment against

26 Plaintiffs and in favor of Johnson & Johnson be entered;

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1 (3) Johnson & Johnson be awarded its costs and expenses, including reasonable
2 attorney's fees;

3 (4) Johnson & Johnson be awarded reasonable attorney's fees for having to
4 defend this action, and for having to defend this action in the State of Washington, pursuant
5 to RCW 4.28.185(5), CR 11, and any other legal or equitable principle which permits the
6 award of attorney's fees under the circumstances; and,
7

8 (5) This Court award Johnson & Johnson any other and general or specific relief
9 as this Court may deem just and proper.

10 DATED this 27th day of June, 2013.

11
12 SCHEER & ZEHNDER LLP

13
14 By /s/ Jeffrey R. Johnson

/s/ Gregory Thatcher

15 JEFFREY R. JOHNSON, WSBA No. 11082

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16 GREGORY THATCHER, WSBA No. 40902

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17 Attorneys for Defendants Johnson & Johnson,
18 Inc. and Ethicon, Inc.
19
20
21
22
23
24
25
26

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

I hereby certify that on June 27, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel listed below. I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>COUNSEL FOR PLAINTIFF</u> Kristin Houser, Esq. Schroeter Goldmark & Bender 810 Third Avenue Suite 500 Seattle, WA 98104	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via CM/ECF <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Certified Mail <input checked="" type="checkbox"/> Via Legal Messenger
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DATED this 27th day of June, 2013, at Seattle, Washington.


Maggi Gruber

ANSWER OF DEFENDANT JOHNSON & JOHNSON TO
PLAINTIFFS' COMPLAINT FOR DAMAGES, CAUSE
NUMBER 2:13-CV-01108 – Page 24

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